

IN THE MATTER OF AN ARBITRATION

BETWEEN:

ST. LAWRENCE COLLEGE

(The "College")

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 417

(The "Union")

AND IN THE MATTER OF THE GRIEVANCE OF MARY ANN WHITE

BOARD OF ARBITRATION

David K.L. Starkman
Richard O'Connor
Ronald Kelly

Chair
Employer Nominee
Union Nominee

APPEARANCES FOR THE COLLEGE

Patricia Brethour
Cindy Bleakney

Counsel
Human Resources Consultant

APPEARANCES FOR THE UNION

Susan Ballantyne
Mary Ann White

Counsel
Chief Steward

A Hearing in this matter was held on April 19, 2004 at Brockville, Ontario

AWARD

The Union alleges that the College has violated article 32.03 of the collective agreement by not having the appropriate persons attend Step One grievance meetings.

This article provides in part as follows:

Step One

An employee shall present a signed grievance in writing to the employee's immediate supervisor setting forth the nature of the grievance, the surrounding circumstances and the remedy sought. The immediate supervisor shall arrange a meeting within seven days of the receipt of the grievance at which the employee, a Union Steward designated by the Union Local, if the Union Local so requests, the immediate supervisor and the supervisor of that person shall attend and discuss the grievance....

Step Two

The grievor shall present the grievance to the College President. The College President or the President's designee shall convene a meeting concerning the grievance, at which the grievor shall have the opportunity to be present, within 20 days of the presentation, and shall give the grievor and a Union Steward designated by the Union Local the President's decision in writing within 15 days following the meeting...

The grievance specifically alleges that, in grievances arising from the Brockville and Cornwall campuses of the College, the supervisor of the immediate supervisor of certain grievors is Mr. Volker Thomsen, the President of the College, and that he was not attending the Step One meetings in person as required by the provisions of the collective agreement.

In response to the grievance Mr. Thomsen wrote to Ms. White, the Chief Steward, in part as follows:

...It is my understanding this issue arises as a result of our organization structure. Due to the College's structure, all academic employees on the Cornwall and Brockville campuses report to supervisors who report directly to me. Since this is the case, I understand the Union's position to be that I must be present at the Step 1 grievance meeting for all personal grievances filed by faculty on these two campuses. As I indicated at our meeting, due to my busy schedule, it would be practically impossible for me to be available within seven days of the filing of a grievance to attend a meeting on either of the Brockville, or Cornwall campuses.

In resolution of this grievance, I propose to you that the College will ensure, in addition to the immediate supervisor of the grievor, an additional member of the Executive Committee, acting as my designate, will be present at all Step 1 individual grievance for employee for the Brockville and Cornwall campuses.

I trust you will see this as an acceptable compromise and that this will resolve this issue.

Yours truly,

Volker Thomsen
President and CEO

The Union acknowledged that the College had the discretion to unilaterally develop and implement a management structure. It was the Union's position however that, if such a structure made the President of the College the supervisor of a grievor's immediate supervisor, then the collective agreement required the President to attend Step 1 grievance meetings relating to such grievances for both individual and policy grievances.

Reference was made to articles 4.02 A 6, 27.14 A, and 32.10, all of which refer to certain responsibilities of the President of the College, and all of which provide that the President can appoint a designee to discharge those duties. Article 32.09 allows the College to designate an alternate to the Director of Human Resources to receive group grievances. In the Union's view, when the parties wished to allow the appointment of a designee they provided specifically for this possibility and, insofar as there is no reference to a designee concerning Step 1 grievance meetings, such designee could not be appointed.

The College submitted that the Board should read in the words "or a designee" into the Step 1 grievance meeting language. It pointed out that, in every other case where the President was involved in a matter of process, the collective agreement made provision for the appointment of a designee, and it would be appropriate to infer such a provision in this case, as otherwise the grievance process would be unworkable.

DECISION

Prior to this grievance being filed, the parties had a local agreement setting out a protocol for the processing of grievances. The Union withdrew its consent to the protocol in March, 2003 indicating that it wished to refer to the grievance processes outlined in the collective agreement.

The collective agreement language is clear that at a Step 1 grievance meeting, the

immediate supervisor, and the supervisor of that person shall be present. Because of the organizational structure of the College, Mr. Volker Thomsen, the President of the College, is the immediate supervisor of the supervisor of the Professors at the Brockville and Cornwall campuses, and therefore the Union urges a strict application of the language which requires that the President attend Step 1 meetings.

The College urges us to relieve against this result by reading into the collective agreement language a provision that the President can appoint a designee to attend in his stead, and references other provisions in the collective agreement which provide that the President can appoint a designee.

The Union references the same provisions to indicate that, when the parties had intended to give an option to appoint a designee, they had done so explicitly and that the absence of such language in article 32.03 concerning the Step 1 grievance meeting was an indication that the parties did not intend the supervisor of the immediate supervisor of the grievor to have the option of appointing a designee. Reference was also made to article 32.04 D which provides, in part, that an "arbitration board shall not be authorized to alter, modify or amend any part of the terms of the Agreement".

The difficulty in this matter is that the President of the College is also the supervisor of the immediate supervisor of certain academic bargaining unit members at the Brockville and Cornwall campuses, unlike at the Kingston campus, where Deans, for the most part, perform this function. Having the President in this capacity creates certain

difficulties with the functioning of the grievance procedure because, if, as the Union asserts, the President is required to attend certain Step 1 grievance meetings, and if the matter is not resolved at that meeting, then at Step 2 the grievance is presented to the College President or the President's designee for consideration.

Alternatively, if it is to be read into the Step 1 language that the supervisor of the immediate supervisor is entitled to appoint a designee as the College submits, this option would be open to all such persons, not just the College President, and if the option of appointing a designee is restricted to the College President when acting in such a supervisory role, and the matter is not resolved at Step 1, then the grievance at Step 2 will again be presented to the College President or his designee who might be the same person as previously designated at Step 1.

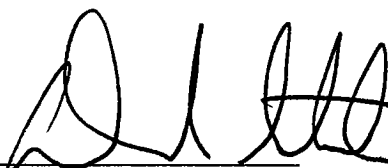
Having considered the matter, this Board has determined that the language is clear that the immediate supervisor and the supervisor of that persons must attend the Step 1 grievance meeting. If the supervisor of the immediate supervisor is the President of the College, then the language of the collective agreement requires the President to attend. It may be that there are circumstances when language is appropriately read into a collective agreement, but these should be very rare occasions, where, inter alia, the language on its face is unenforceable, inherently contradictory, or contrary to law.

This is not such a case. The College can determine the management structure it prefers. If however, the College President is the supervisor of a grievor's immediate

supervisor then the College President is required to attend the Step 1 grievance meeting as set out in article 32.03 of the collective agreement.

For these reasons the grievance is allowed, and the College is declared to have violated article 32.03 of the collective agreement. The Union's request for an apology and a fine is denied. The Panel will remain seized should there be any difficulties in the interpretation or implementation of this award.

Dated at Maberly, Ontario this 17th day of May, 2004



David K.L. Starkman
Chair

"I concur"
Richard O'Connor
College Nominee

"I concur"
Ronald Kelly
Union Nominee